Frequently Asked Questions concerning
Report of Identification of Select Agents and Toxins

General

1. **What is the difference between an "exemption" and "exclusion" in the context of the Select Agent Regulations (7 CFR 331, 9 CFR 121, and 42 CFR 73)?**

   Exemptions

   The select agent regulatory exemptions provide that individuals or entities that may find themselves in possession of a select agent or toxins are not required to be in compliance with the select agent regulations for so long as they take the specific actions required and/or meet the specific conditions proscribed by the regulations in section 5 or section 6. The current exemptions provided for in the regulations are for (1) diagnostic, verification, or proficiency testing specimens in clinical or diagnostic laboratories, (2) products licensed or otherwise approved for use by the Federal government under specific statutes, (3) investigational products approved by the Federal government under specific statutes, and (4) when either the HHS Secretary or the USDA Secretary may grant specific exemptions due to a public health or agricultural emergency, respectively.

   Exclusions

   The select agent regulatory exclusions list the circumstances under which the select agent regulations do not apply to the possession, use, or transfer of one of the biological organisms or toxins listed in the select agent regulations as either an HHS or overlap select agent or toxin.

2. **Our entity is a diagnostic/clinical laboratory whose activities involving select agents and toxins are limited to diagnosis, verification, and proficiency testing. Do we meet the exemption provisions of Select Agent Regulations?**

   It depends. Anyone that possesses a select agent or toxin that is contained in a diagnostic or verification specimen is exempt from the requirements of the select agent regulations only for that specific specimen and only if:

   - Unless directed otherwise by APHIS or CDC, within 7 calendar days after identification of the select agent or toxin that is contained in the diagnostic or verification specimen, you either transfer the select agent or toxin in accordance with Section 16 of the select agent regulations (includes prior approval by APHIS or CDC) or destroy the specimen on-site by a recognized sterilization or inactivation process.

- You have to secure the select agent or toxin against theft, loss, or release during the period between when you know it is a select agent or toxin and when you either properly transfer or destroy it. This is a performance standard and diagnostic and clinical laboratories which routinely identify biological agents and toxins identified in the regulations as select agents and toxins need to implement physical security safeguards.
- You are required to immediately report the possession of one of the specific select agents listed in the regulations. (See immediate notification list). Additionally, you have to file with either CDC or APHIS an APHIS/CDC Form 4 within seven (7) days. You will also be required to report the agent or toxin to other appropriate authorities when required by Federal, State, or local law.
- You have to keep the completed APHIS/CDC Form 4 for a period of three years.

Anyone that possesses a select agent or toxin that is contained in a specimen used as a part of proficiency testing is also exempt from the requirements of the select agent regulations only for that specific specimen and only if:

- Unless directed otherwise by APHIS or CDC, within 90 days of receipt of the sample used for proficiency testing, you either transfer the select agent or toxin in accordance with Section 16 of the select agent regulations (includes prior approval by APHIS or CDC) or destroy the specimen on-site by a recognized sterilization or inactivation process.
- You have to secure the select agent or toxin against theft, loss, or release during the period between when you know it is a select agent or toxin and when you either properly transfer or destroy it.
- You are required to file with either CDC or APHIS an APHIS/CDC Form 4 within ninety (90) days of receipt of the proficiency testing sample. It is important to note that the ninety (90) days starts from the date you receive the proficiency test sample and not from the date you identify the select agent. You will also be required to report the agent or toxin to other appropriate authorities when required by Federal, State, or local law.
- The entity maintains a completed APHIS/CDC Form 4 for a period of three years.

NOTE: Possession of any select agent or toxin by an individual or entity that is not registered with either APHIS or CDC select agent program is a violation of Federal law. Such possession would include the retention of a select agent or toxin which had been identified from a diagnostic, verification, or proficiency specimen as a positive control or reference sample.

3. **What is the purpose of the APHIS/CDC Form 4?**

The purpose of this form is to report select agents or toxins contained in specimens presented for diagnosis, verification, or proficiency testing as well as the seizure of select agents or toxins by federal law enforcement agencies.

Diagnosis and verification

4. **Is a registered entity required to report select agents or toxins identified from**

clinical/diagnostic specimens?

Yes. The Responsible Official must report the identification and final disposition of any select agent or toxin contained in a specimen presented for diagnosis, verification, or proficiency testing. The important difference between a registered entity or individual and someone who is not registered is that in most cases a registered entity or individual has the option of adding the identified or verified select agent to their registration.

5. **What section do I complete if I have identified a select agent or toxin in a clinical sample?**

   You would complete Section 1 of the APHIS/CDC Form 4 within seven calendar days of identification of a select agent or toxin as a result of diagnosis or verification.

6. **Is a toxin identified as a result of diagnosis or verification required to be reported on APHIS/CDC Form 4?**

   If the total amount of the toxin in possession by the clinical or diagnostic laboratory does not exceed the amounts identified in 42 C.F.R. 73.3, then possession of the toxin would be excluded from the select agent regulations and an APHIS/CDC Form 4 would not be required. Otherwise, you will have to complete Section 1 of the APHIS/CDC Form 4 within seven calendar days of identification.

   Note: The Federal requirements to register with the select agent program applies at any time the aggregate amount of a select agent toxin under the control of a clinical or diagnostic laboratory exceeds the aggregate amounts specified (*See* 7 CFR § 331.3, 42 CFR §§ 73.3 and 73.4 (d)(3) and 9 CFR §§ 121.3 and 121.4 (d)(3)).

7. **Is an unregistered entity able to keep an isolate of a presumptive select agent sent to a reference laboratory for confirmation?**

   Yes. An isolate may be kept by the sending non-registered laboratory until the identification of a select agent or toxin. After the identification, the non-registered laboratory must either:
   A) Destroy the specimens (diagnostic sample containing the isolate, or isolate). If the choice is to destroy the select agent or toxin, the date and method of destruction must be indicated on the APHIS/CDC Form 4; or
   B) Transfer the specimens (diagnostic sample containing the isolate, or isolate) to an entity registered for the select agent(s) or toxin(s). Prior to the transfer, pre-approval must be obtained by submitting APHIS/CDC Form 2 ("Request to Transfer of Select Agents or Toxins") to APHIS or CDC.

8. **If a patient produces multiple specimens, do I need to submit a separate APHIS/CDC Form 4 for each sample?**

   No. You would complete one Section 1 of APHIS/CDC Form 4 for the patient (i.e. case) specimens. This information would be listed in block 15 in Section 1 and should include the specimens received (e.g., tissue, fluid, urine, etc.) and the different media plates used (e.g., 2-

Blood Agar Slants, 2-Chocolate Agar Plates, 1-THIO broth, etc.).

9. **Can I report *Coccidioides* species instead of *Coccidioides posadasii/Coccidioides immitis?***

   No. Since *Coccidioides posadasii* and *Coccidioides immitis* are the only currently recognized *Coccidioides* species that can affect humans, we ask that you list as "*Coccidioides posadasii/Coccidioides immitis*" since this is how the fungi is listed as a select agent.

10. **Is the clinical laboratory able to retain an isolate that contains a select agent?**

    Maybe. If the clinical laboratory is registered with CDC or APHIS for the identified select agent(s) and toxin(s), the laboratory may retain the material. Note: The registered clinical laboratory must still account for the new addition in its records and in accord with the select agent regulations.

11. **How would the registered entity note on the APHIS/CDC Form 4 that it retains the sample?**

    In block 17 in Section 1, the entity would check "retained" and list the Principal Investigator that took responsibility of the material. For the "date select agent or toxin was transferred," this would be the date that the Principal Investigator added the material to his/her inventory.

Proficiency Testing

12. **Does the sender/sponsor need an APHIS/CDC Form 2 when sending a specimen for proficiency testing that contains a select agent or toxin?**

    No. A select agent or toxin that is contained in a specimen for proficiency testing may be transferred without prior authorization from APHIS or CDC provided that, at least seven calendar days prior to the transfer, the sponsor/sender reports to APHIS or CDC the select agent or toxin to be transferred and the name and address of the recipient.

13. **What section do I complete if I have identified a select agent or toxin in a proficiency test?**

    You would complete Section 2 of the APHIS/CDC Form 4 within ninety days of receipt.